In the leading and probably the earliest American case on this subject, *McDonald* v. *Massachusetts General Hospital* (1876) 120 Mass. 432, the court decided that a charitable corporation was not liable for the negligence of its assistants, but added language by way of *dictum* which would seem to indicate that it would be liable if due care were not used in their selection. This *dictum,* so interpreted, has been widely followed and probably represents the weight of authority to-day. *St. Paul's Sanitarium* v. *Williamson* (Tex. 1914) 164 S. W. 36; *Illinois Cent. Ry.* v. *Buchanan* (1907) 126 Ky. 288, 103 S. W. 272; *contra, Adams* v. *University Hospital* (1907) 122 Mo. App. 675, 99 S. W. 453. And at least one jurisdiction, going still farther, now holds that a charitable corporation is liable even though it exercised due care in the selection of its assistants. *Tucker* v. *Mobile Infirmary Ass'n.* (1915) 191 Ala. 572, 68 So. 4. The ground of the decision in the *McDonald* case was that trust funds cannot be diverted from the charitable purposes designated by the donor to the payment of damages. This being so, it is difficult to see why it is material whether or not the trustees were negligent in selecting their assistants. See *Adams* v. *University Hospital, supra,* 675, 686; 7 Columbia Law Rev. 353, 354. And so it seems that the instant case, which overrules the frequently cited *dictum* in the *McDonald* case, is perfectly consistent with the trust fund theory. The view taken by the Alabama court in the *Tucker* case, however, is believed to be the fairest. Some negligence on the part of physicians and nurses is inevitable. It therefore seems just and reasonable that damages for such negligence should be considered legitimate operating expenses of a charitable hospital. And the donor of the trust funds may well have contemplated that part of these funds should be used to compensate injured beneficiaries. See *Hewitt* v. *Woman's Hospital* (1906) 73 N. H. 556, 64 Atl. 190.

MASTER AND SERVANT—FEDERAL EMPLOYERS' LIABILITY ACT—"EMPLOYEE".—The W. M. R. Co. ran a line from H to L in Maryland and there connected with the defendant line running from L to R in Pennsylvania. The two lines operated under an agreement whereby the trains of one manned by crews primarily employed by it were permitted to run over the track of the other. The plaintiff was hired by the W. M. R. Co. but was injured while on the track of the defendant and engaged in "picking up" cars under the direction of the defendant's yardmaster. *Held,* Justice Clark dissenting, the defendant is not liable because the plaintiff was not "employed by it" within the federal Employers' Liability Act. *Hull* v. *Philadelphia & Reading Ry.* (U. S. Sup. Ct. Oct. Term, 1919, No. 151, April 19, 1920).

In order to recover as an "employee" within the federal Employers' Liability Act, U. S. Comp. Stat. (1916) § 8657, 35 Stat. 65, the plaintiff must show that the relation of master and servant existed between the defendant and himself. *Chicago R. I. & P. Ry.* v. *Bond* (1916) 240 U. S. 449, 36 Sup. Ct. 403; see *Wagner* v. *Chicago & A. R. R.* (1914) 265 Ill. 245, 250, 106 N. E. 809. The test of the existence of that relationship is—Is the plaintiff engaged in the defendant's affairs? See *Standard Oil Co.* v. *Anderson* (1909) 212 U. S. 215, 221, 29 Sup. Ct. 252. If so, the plaintiff is his servant. To determine whose affairs the plaintiff was engaged in—in other words, to discover the *entrepreneur* upon whom the loss is to fall as a part of his operating expense —various factors of the agreement must be considered. See 20 Columbia Law Rev. 333. The dissenting justice quite correctly points

out that when the plaintiff was injured he was working, according to the agreement between the defendant and the W. M. R. Co, subject to the "rules, regulation, discipline and orders" of the defendant and at the moment was acting under the specific direction of the defendant's yardmaster. The defendant was paying for the services rendered by the plaintiff and had authority to cause the latter's discharge if his service was unsatisfactory. All these facts would seem to indicate that the plaintiff at the time of the accident was under the defendant's control and engaged in its affairs. For a fuller discussion of the principles involved in this case, see 20 Columbia Law Review 333.

NEGLIGENCE—VIOLATION OF STATUTE OR ORDINANCE AS NEGLIGENCE PER SE.—The defendant, negligently driving on the wrong side of the road, collided with plaintiff's intestate, who was driving without the lights required by the Highway Law. The plaintiff's intestate was thrown to the ground and killed. In a tort action, *held,* one judge dissenting, the failure of the plaintiff's intestate to comply with the requirements of the Highway Law was negligence *per se. Martin* v. *Herzog* (1920) 228 N. Y. 164, 126 N. E. 814.

One who fails to conduct himself according to the standard exacted by the law is said to be negligent. Whether or not a litigant has measured up to the common law standard, *i. e.,* exercised the care that a reasonable man would ordinarily use under the circumstances, is usually a question of fact for the jury. See *Henderson* v. *Northam* (1917) 176 Cal. 493, 499, 168 Pac. 1044. But when a standard has been fixed by a statute, it is clearly not within the province of a jury to determine that one who has violated the statute has not been negligent. And so the weight of authority holds that the breach of a statutory duty is not merely evidence of negligence, but negligence as a matter of law. *Schell* v. *DuBois* (1916) 94 Oh. St. 93, 113 N. E. 664; *Whitehead Coal Mining Co.* v. *Pinkston* (Okla. 1918) 175 Pac. 364; *contra, Kimball* v. *Davis* (1918) 117 Me. 187, 103 Atl. 154. On the ground that a municipal ordinance is not usually designed to benefit the members of the community as individuals, some courts have refused to hold that the violation of an ordinance is any more than evidence of negligence. *Rotter* v. *Detroit United Ry.* (Mich. 1919) 171 N. W. 514. Other courts, recognizing that there is no substantial difference between a statute and an ordinance, take the more logical view that failure to conform to the standard required by either is negligence *per se. Schell* v. *DuBois, supra.* By way of *dictum,* the court in the instant case recognized the latter to be the sound view, but the New York law is still in accord with the former. Supp. 920. It should be noted, however, that although a litigant is *Orr* v. *Baltimore & Ohio R. R.* (1915) 168 App. Div. 548, 153 N. Y. chargeable with negligence as a matter of law, it does not necessarily follow that judgment will be entered against him. In order to take advantage of his opponent's breach of duty, a plaintiff or defendant, as the case may be, must show that he comes within the class intended to be benefited by the statute or ordinance. *Corbett* v. *Spanos* (1918) 37 Cal. App. 200, 173 Pac. 769. And there must always be a causal connection between the negligence and the injury. *Henderson* v. *Northam, supra.* It is believed that the dissenting opinion in the instant case is based upon a failure to appreciate the distinction between negligence *per se* and negligence which is the natural and proximate cause of the injury.